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File '86 Auth.

Central Intelligence Agency

Washington, D.C. 20505

OLL 85-1294

2 May 1985

MEMORANDUM FOR: Donald Gregg
Assistant to the Vice President for National Security Affairs

SUBJECT: Further to Yesterday's Telecon re DCI EP-1

Don:

Couldn't enlist Don Regan's support since he is with the President and SSCI mark-up is 8 May.

Summary:

- FY 86 Intelligence Authorization Bill sent last week to the Vice President as President of the Senate, contains section to increase DCI grade to EP-1.
- Similar section was knocked out of last year's bill by the Senate with advice: wait until after the election.
- Canvas of SSCI reveals either support or neutral (not oppose) consensus except Senator Roth, who opposes. Particular significance: he is also Chairman, Senate Governmental Affairs Committee and said he'd ask for referral if it passes the SSCI.
- His opposition: doesn't believe DCI should be Cabinet member (but grants this President's decision); does not consider DCI peer of Secretary of Defense/Secretary of State; believes it bad signal to increase DCI salary when seeking $50B deficit reduction; believes other Agencies would follow suit; would not endorse approval for succeeding DCI's as compromise to avoid Casey controversy.
- Talking points we've been using are attached.

Request:

- Consider asking Vice President, as former DCI, to ask Senator Roth to remain neutral on SSCI vote and not seek referral for action to his Committee.
- Possible alternative: [redacted] make the request on Vice President's behalf. STAT

[redacted] STAT

Charles A. Briggs

Talking Points

The substantive points to make seem to be these:

-- The range of issues to which the Central Intelligence Agency contributes is vastly wider today than 40 years ago when the current structure was set. (1947 focus was on Europe and Soviet military; today we worry terrorism, whole third world, trade, narcotics.) In short, the scope of the DCI's job has widened immensely.

-- Partially as a result, the DCI is necessarily in constant close communication with the Secretaries of Defense and State. He is considered their peer in all substantive respects. It is unfortunate that we cannot attach the status to his position which it would otherwise merit.

-- Beyond the substantive, the DCI's management responsibility has grown in major ways over the past decade. Through the period covered by DCI's Schlesinger, Colby, Bush, Turner and now Casey, we have seen a continuing evolution in the DCI's responsibility for resource allocation decisions affecting the entire community. This is a function that was simply not exercised in a serious way before the early 1970's, and ~~again~~ illustrates the great increase in scope of the DCI's responsibilities.

-- The increase in prestige attached to upgrading the position to Level I can only assist future Presidents to find qualified candidates to deal with the DCI's very important responsibilities.

-- DCI is a member of Cabinet. This is Presidential prerogative. We recognize that just because you're in the Cabinet doesn't mean you should be Level I. In fact, the decision to move to Level I should be made irrespective of whether DCI is in the Cabinet. (There is currently one person, the U.S. Trade Representative, who is a Level I and not currently in the Cabinet.)

-- It is said by some that upgrading the position to Level I may help politicize intelligence. This is a red herring. We don't believe that politicization has much to do with either Executive pay levels or Cabinet status.

-- It is our understanding that this issue was pressed with the Committee the year before last. At that time, we were told to wait. We have waited patiently. We believe that action is now appropriate.

SUBJECT: Memorandum to Donald Gregg, Assistant to the Vice President for National Security Affairs, re DCI EP-1

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United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510

May 2, 1985 #85-1578

Mr. Charles A. Briggs, Director
Office of Legislative Liaison
Central Intelligence Agency
Washington, D.C. 20505

Dear Chuck:

Section 404 of the Administration's draft Intelligence Authorization Act for fiscal year 1986 contains proposed amendments to the Central Intelligence Agency Act of 1949 and the National Security Agency Act of 1959 with respect to personnel actions related to prior or current alcohol or drug abuse. The new authorities that would be granted by these amendments would be effective "notwithstanding any other provisions of law."

As you know, the Committee looks favorably on legislative initiatives that promote the more effective and efficient performance of intelligence functions, or that deal with problems related to the protection of intelligence sources and methods. Unfortunately, the late submission of the Administration's fiscal year 1986 legislative proposals, and the paucity of accompanying explanation in this particular case, have made it exceedingly difficult for the Committee to act favorably on the CIA/NSA personnel authorities proposal in the context of its markup of the fiscal year 1986 Intelligence Authorization Bill. Non-inclusion of this proposal in the Authorization Bill should not be taken as a definitive judgment on its merits, however, and we intend to give the provision full and serious consideration.

In order to begin this process, and so that we can better understand the rationale behind the proposal, I would ask that the Agency supply us with written material that:

-- identifies the particular provision of law that gives rise to the problem with which the proposal in section 404 of the Administration's draft bill is designed to deal;

-- explains the relevance or irrelevance of 29 U.S.C. 794 and the decision in Coleman v. Darden (595 F2d 533);

-- explains the relevance or irrelevance of the definition of "handicapped individual" in 29 U.S.C. 706(7)(B);

-- identifies the recent court decisions and rulings of the Equal Employment Opportunity Commission and the Merit Systems Protection Board that have given rise to concern within the Intelligence Community;

-- describes the extent to which drug and alcohol abuse constitute a problem at CIA and NSA and the mechanisms that currently exist to cope with that problem; and

-- explains why existing special statutory authorities (e.g., section 102(c) of the National Security Act) are deemed insufficient.

We look forward to working with you on this proposal.

Sincerely,

Gary M. Chase
Chief Counsel

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510

May 2, 1985 #85-1577

Mr. Charles A. Briggs, Director
Office of Legislative Liaison
Central Intelligence Agency
Washington, D.C. 20505

Dear Chuck:

Section 402 of the Administration's draft Intelligence Authorization Act for fiscal year 1986 contains a proposed amendment to the National Security Act of 1947 designed to create a statutory right for the United States to take interlocutory appeals from adverse federal court discovery or evidentiary rulings, or rulings on potentially dispositive motions, when the Director of Central Intelligence certifies that such a ruling would have an adverse impact on the national security.

As you know, the Committee looks favorably on legislative initiatives that promote the more effective and efficient performance of intelligence functions, or that deal with problems related to the protection of intelligence sources and methods. Unfortunately, the late submission of the Administration's fiscal year 1986 legislative proposals, and the paucity of accompanying explanation in this particular case, have made it exceedingly difficult for the Committee to act favorably on the interlocutory appeal proposal in the context of its markup of the fiscal year 1986 Intelligence Authorization Bill. Non-inclusion of this proposal in the Authorization Bill should not be taken as a definitive judgment on its merits, however, and we intend to give the provision full and serious consideration.

In order to begin this process, and so that we can better understand the rationale behind the proposal, I would ask that the Agency supply us with written material that:

-- describes in detail the recent cases in which the U.S. has encountered significant problems in attempting to perfect interlocutory appeals;

-- describes the sensitive national security information that was put at risk of disclosure as a result of these problems;

-- explains efforts made to perfect interlocutory appeals in these cases under existing mechanisms such as Rules 12(c) and 56(b) of the Federal Rules of Civil Procedure, and 28 U.S.C. 1291 and 1651, and analyzes why such efforts were successful or unsuccessful;

-- analyzes the effect that the interlocutory appeal authority would have with respect to the length of delay in lower court proceedings that could be expected to result from the provision's application; and

-- explains why the proposal is drafted so broadly as to give the DCI authority to make certifications in cases that do not necessarily involve intelligence matters.

We look forward to working with you on this proposal.

Sincerely,

Gary M. Chase
Chief Counsel